

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Niranjan Tripathy, et al.
Serial No.: 09/580,516
Filing Date: May 25, 2000
Group Art Unit: 2145
Confirmation No.: 9356
Examiner: Melvin H. Pollack
Title: **ELEMENT MANAGEMENT SYSTEM WITH
AUTOMATIC REMOTE BACKUP OF NETWORK
ELEMENTS LOCAL STORAGE**

MAIL STOP: Reply Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Reply Brief

Appellants respectfully submit this Reply Brief under 37 C.F.R. § 41.41 in response to the Examiner's Answer mailed August 8, 2006. Appellants filed an Appeal Brief on May 24, 2006 explaining clearly and in detail why the final rejections of Claims 1-21 are improper and should be reversed by the Board of Patent Appeals and Interferences (the "Board"). In the Examiner's Answer, the initial rejections are sustained. This Reply Brief addresses responses made in the Examiner's Answer.

Argument

Appellants filed an Appeal Brief on May 24, 2006 explaining clearly and in detail why the following rejections are improper and should be reversed by the Board: (1) the rejections of Claims 1-4, 8, 12, 16, and 20 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,910,984 issued to Low ("*Low*"); (2) the rejections of Claims 5, 9, 13 and 17 under 35 U.S.C. 103(a) as being unpatentable over *Low* as applied to claims 4 and 12 and further in view of U.S. Patent 5,768,353 to Browne ("*Browne*"); (3) the rejections of Claims 6, 10, 14, 18, and 21 under 35 U.S.C. 103(a) as being unpatentable over *Low* as applied to Claims 4 and 12 and further in view of U.S. Patent 5,862,325 to Reed, et al. ("*Reed*"); and (4) the rejections of Claims 7, 11, 15, and 19 under 35 U.S.C. 103(a) as being unpatentable over *Low* as applied to Claims 4 and 12 and further in view of *Browne* and *Reed*.

In the Examiner's Answer, the Examiner responds to some of the arguments made by Appellants in the Appeal Brief with respect to the rejections indicated above. *See* Examiner's Answer, pages 6-10. Appellants reply to the Examiner's responses below.

I. Appellants' Reply to Examiner's Responses Regarding the Rejections of Claims 1-4, 8, 12, 16, 20 and 21

A. Claims 1-3

The Examiner asserts that Appellants did not provide arguments against the Examiner's showing that Low's SLEE performs backup of SPAs, which in turn perform backup of SSPs. *See* Examiner's Answer, page 7. The Examiner states that "[i]t is the examiner's assertion that the elements perform both local and remote backup, a combination not precluded by the claims as currently drawn." *Id.* The Examiner also states that:

Further, and more to the point, the SPA's storage unit 55 saves 'all relevant state data for processing the CS service request; this data will include relevant CV context data and state data on the SLP processing being executed to service the service request (col. 11, lines 1-5).' In other words, the SLP has remote backup performed. Further items mentioned above also show how a similar 'context' backup process occurs for other units, and further the necessity of having all data so that an SPA may be switched.

Id.

As an initial matter, Appellants did address, on page 12 of the Appeal Brief, the Examiner's initial assertion that the SLEE/SLP in *Low* may be a potential network element manager performing backup of locally stored information. Appellants noted that an SPA in *Low* provides SLEE functionality, but there is no disclosure of remote backup of information stored at a network element in connection with providing this functionality. *See* Appeal Brief, page 12.

As indicated above, the Examiner's Answer cites to quotes from column 11, lines 1-5 to assert that the SPA performs backup of SSPs. Appellants note that the claim element at issue is "automatically initiated background processes which remotely backup information which has been locally stored in ones of said network element." The portions of *Low* cited in the Examiner's Answer state that ". . . the service logic 50 will save to the reliable store 55 all relevant state data for processing the CS service request; this data will include relevant CV context data and state data on the SLP processing being executed to service the service request." *Low*, column 11, lines 1-5. Thus, *Low* indicates that the service logic 50 (of the SPA) saves data for processing a CS service request, including CV context data and state data concerning an SLP processing being executed to service the service request. This is merely the saving of data relating to the SLP and used for processing a service request. There is no disclosure of remote backup of information that has been locally stored in a network element.

Therefore, as indicated in the Appeal Brief, Appellants respectfully submit that *Low* does not disclose each element of Claim 1 and Claims 2-3 depending therefrom.

B. Claims 4, 8, 12, 16, 20, 21

To address the rejections of these claims, the Examiner's Answer refers to the argument regarding Claim 1. *See* Examiner's Answer, page 7. As discussed above, Appellant notes that *Low* indicates that the service logic 50 (of the SPA) saves data for processing a CS service request, including CV context data and state data concerning an SLP processing being executed to service the service request. This is merely the saving of data relating to the SLP and used for processing a service request. There is no disclosure of storing at a network element manager local data received from network elements.

Proposed Claim Amendment

With respect to Claims 4, 12, 20 and 21, the Examiner's Answer states that "applicant argues that *Low* does not disclose 'storing remotely from the network elements (P. 13)'" and points out that the Examiner did not enter the claim amendment proposed after the final Office Action. *See* Examiner's Answer, page 8. However, while the Examiner appears to be trying to quote from the Appeal Brief, the Examiner misrepresents and misquotes Appellants' arguments. Appellants never stated that *Low* does not disclose "storing remotely from the network elements" with respect to these claims as contended by the Examiner. As indicated on pages 13 and 14 of the Appeal Brief, Appellants stated that there is no disclosure in *Low* for "storing at a database of a network element manager respective local data received from network elements" and that there is no disclosure of "storing at a network element manager local data received from network elements." Appeal Brief, pages 13-14. Appellants note that this quoted language follows Claim 4 at issue which recites "receiving, from each of the plurality of network elements, the respective local data" and "storing the respective local data at a database of the network element manager."

However, Appellants maintain their request that the proposed amendments to Claims 4, 12, 20 and 21 be entered because the amendments merely clarify that the respective local data is stored "remotely from the network elements" which is consistent with language already in other claims, such as Claim 1 which recites processes which remotely backup information which has been locally stored in ones of said network elements. No new issues are presented by the proposed amendment.

II. Appellants' Reply to Examiner's Responses Regarding the combination of Browne and Reed with Low

A. *Browne and Low*

With respect to the proposed combination of *Browne* with *Low*, the Examiner states that "Low needs a protocol specification in order to be built" and that *Browne* "teaches 'an internetwork call accounting system for use in a communication network such as the public switched telephone network (abstract).'" Examiner's Answer, pages 8-9. The Examiner also states that:

[*Browne*] insists on using its own protocol, and specifies it clearly. Therefore, [*Browne*] provides information on the superiority of this protocol over other protocols, and hence provides motivation. If there wasn't sufficient motivation to use such protocols in a communications network, Browne . . . would either remain silent as to the protocol, or chosen a different one.

Examiner's Answer, page 9. However the Examiner provides no support and does not cite to any portion of the cited art to support these conclusory assertions. The Examiner further quotes from *Browne's* teachings regarding collection and processing "arising outside an operator's network but terminating in or simply crossing the operator's network" and states that "Low shows in several instances embodiments that fulfill this description, and a desire to modify as little of operator's networking equipment as possible." Examiner's Answer, page 9. However, again the Examiner cites to nothing to support these statements.

As discussed in detail in Appellants' Appeal Brief on pages 16 and 17, the Examiner has previously made other, different statements regarding a motivation to combine *Browne* and *Low*. These statements were also conclusory and unsupported. Even if the Examiner's proposed combination were even possible, the rejections would still be improper because as discussed above the Examiner has not shown the required teaching in the prior art to combine *Low* and *Brown*. There is no citation to the specific teaching in the prior art that would motivate the combination, as required by the M.P.E.P. and governing Federal Circuit caselaw.

Thus, Appellants respectfully submit that the Examiner's conclusory assertion that it would have been obvious to combine the teachings of *Low* and *Brown* to arrive at Appellants' invention is entirely insufficient to support a *prima facie* case of obviousness under 35 U.S.C. § 103(a) under the M.P.E.P. and the governing Federal Circuit case law.

B. *Reed and Low*

With respect to the proposed combination of *Reed* with *Low*, the Examiner states that "Reed teaches an automated communications system and network (abstract)." Examiner's Answer, page 9. The Examiner also states that:

[*Reed*] insists on using its own protocol, and specifies it clearly. Therefore, [*Reed*] provides information on the superiority of this protocol over other protocols, and hence provides motivation. If there wasn't sufficient motivation

to use such protocols in a communications network, . . . Reed would either remain silent as to the protocol, or chosen a different one.

Examiner's Answer, page 9. However the Examiner provides no support and does not cite to any portion of the cited art to support these conclusory assertions. The Examiner further quotes from *Reed's* teachings regarding the deployment of a global name resolution service and states that "[i]n other words, such protocols would be useful in improving Low's connection methods, such that communication information could include identity, i.e. caller ID." Examiner's Answer, pages 9-10. However, again the Examiner cites to nothing to support these statements and cites to nothing to support any contention that *Low* and *Reed* are related in substantial manner.

As discussed in detail in Appellants' Appeal Brief on pages 18 and 19, the Examiner has previously made other, different statements regarding a motivation to combine *Reed* and *Low*. These statements were also conclusory and unsupported. Even if the Examiner's proposed combination were even possible, the rejections would still be improper because as discussed above the Examiner has not shown the required teaching in the prior art to combine *Low* and *Reed*. There is no citation to the specific teaching in the prior art that would motivate the combination, as required by the M.P.E.P. and governing Federal Circuit caselaw.

Thus, Appellants respectfully submit that the Examiner's conclusory assertion that it would have been obvious to combine the teachings of *Low* and *Reed* to arrive at Appellants' invention is entirely insufficient to support a *prima facie* case of obviousness under 35 U.S.C. § 103(a) under the M.P.E.P. and the governing Federal Circuit case law.

Conclusion

Appellants have demonstrated, through their Appeal Brief and this Reply Brief, that the present invention, as claimed, is clearly distinguishable over the prior art cited by the Examiner. Therefore, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the Examiner's final rejection of the pending claims and instruct the Examiner to issue a notice of allowance of all pending claims.

Appellants believe no fees are due in the filing of this Reply Brief. However, the Commissioner is hereby authorized to charge any fee and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Appellant



Chad C. Walters
Reg. No. 48,022

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Correspondence Address

Customer No. 05073